

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

WACKENHUT CORRECTIONS CORPORATION ^{1/}

Employer

and

Case No. 31-RC-7767

INTERNATIONAL BROTHERHOOD OF CORRECTIONAL
OFFICERS, affiliated with NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. ^{2/}

^{1/} The Employer's name appears as corrected at the hearing.

^{2/} The parties stipulated that the Employer, a Florida corporation, is engaged in the business of managing and operating prisons, jails, and other correctional facilities, and that during the past 12 months, a representative period, the Employer, in the course and conduct of its business operations, has derived revenue valued in excess of \$50,000 from the U.S. Government for services provided. Accordingly, I find that the Employer satisfies the statutory as well as the Board's discretionary standards for the assertion of jurisdiction over government contractors. *Management Training Corp.*, 317 NLRB 1355 (1995).

3. The labor organization involved claims to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

At the hearing, the parties stipulated that the appropriate unit consists of "all full-time and part-time correctional officers employed by the Employer at the Taft Correctional Institute, Taft, California." The record reveals that the Employer provides these services pursuant to its contract with the Federal Bureau of Prisons, herein called the Bureau. The parties also stipulated that the Petitioner is a labor organization which admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards within the meaning of Section 9(b)(3) of the Act. Accordingly, if the unit employees are found to be guards within the meaning of the Act, then the Petitioner is statutorily precluded from being certified as their representative. *A.D.T. Co.*, 112 NLRB 80 (1955); *Wackenhut Corp.*, 196 NLRB 178 (1972).

The evidence is undisputed, and witnesses for both the Petitioner and the Employer testified to essentially the same facts. The Employer operates a prison in Taft, California , consisting of two general areas, the main facility (FCI) and the "camp." The FCI, secured by a perimeter fence, consists of three buildings with four cell dormitories in each building, housing approximately 1700 inmates generally serving less than 10-year sentences for non-violent crimes, e.g., drugs, robberies. The lower-security camp area consists of one building with four cell dormitories housing approximately 500 inmates, who have generally less than 5 more years to serve, and have been deemed very low risk.

The Employer employs a total of approximately 400 employees at the Taft prison, of which 163 are employees in the petitioned-for unit in the classification of correctional officers. Other employees of the Employer at Taft hold positions such as supervisor, case managers, counselors, receptionists, clerks, food service, maintenance, nurses, and teachers. The correctional officers are part of the Employer's Security Department, the hierarchy of which is as follows: 163 correctional officers; 6 sergeants (the correctional officers' direct supervisors); 5 lieutenants; chief of security; assistant warden for security; and senior warden.

The principal responsibilities of the correctional officers are to ensure the safety and security of the prison premises, to ensure against inmate escape or riot, and to search for contraband, stolen or dangerous materials. They must undergo training in the use of both deadly and non-deadly force, safety, CPR, searches, and the use of restraints and weapons. They must obtain a California weapons certificate. Generally, they are assigned to various tasks on a rotating basis, rotating every three months. Their tasks consist of patrolling the FCI perimeter, accompanying or transporting inmates into or out of the facility, monitoring the dormitories, staffing the control room (essentially a supply room), and monitoring other general areas of the facility, i.e., the main lobby/reception area, vocational, recreational and educational areas, receiving/discharge, breakyard, kitchen, and canine duty. At all posts, the officers must conduct regular facility searches for contraband or stolen items, and may conduct pat-down or strip searches of inmates suspected of carrying such items. If any such item is found, the officer is to seize it and turn it over to a supervisor. Many officers also rotate on a Special Emergency Response Team ("SERT") authorized to deal with emergency situations, e.g., a riot, mutiny or hostage situation, or a "forced cell extraction", i.e., when an inmate refuses to leave his cell as directed. In addition, many officers are rotated to monitor

the Special Housing Unit ("SHU"), a maximum security area where disciplined inmates are temporarily housed. While many of the posts require that officers be armed with weapons, arms are not required at the dormitory, vocational, recreational, educational, kitchen, or canine posts.

Correctional officers serving as Dormitory officers, most of the unit positions, are responsible for ensuring against inmate escape or riot, theft or contraband. In addition to conducting regular searches, the dormitory officer must perform regular "counts" of the number of inmates, five to six each day, and report these to a supervisor who will in turn order further searches and other measures if the count reveals that any inmate is missing. While dormitory officers are not armed, they do carry handcuffs, a two-way radio, and a set of keys which control access to the dormitories as well as to other locked areas including "trap doors" and storage rooms.

The primary responsibility of the correctional officers serving as perimeter officers is to ensure against inmate escape. They constantly patrol the fence surrounding the FCI area; they are armed, and are authorized to set off alarms in case of attempted escape. Correctional officers also serve as transport officers and receiving/discharge officers, who accompany inmates into and out of the facility. They are armed and carry handcuffs, belly chains and leg irons which they put on and take off inmates while in transit. Correctional officers serving as control room officers are rotated less often than are those in other positions, apparently every six months or less. They are responsible for issuing keys, handcuffs, radios, cameras and other supplies to other corrections officers and supervisors, and for maintaining the facility's fire detection system. Officers on duty in the education, vocational and recreational areas are responsible for the safety of teachers, counsellors and

other service professionals, as well as the security of these areas. They conduct regular searches for contraband, escort inmates in and out of these areas, which entails the use of handcuffs and other body restraints, and constantly observe these areas to maintain order. While assigned to the lobby/visitation_area, officers are responsible for order and security, and for searching visitors to prevent them from carrying contraband to inmates.

The correctional officers do not themselves have the authority to discipline or generally to arrest. Thus, if contraband is found, if an inmate misbehaves, or if order is disrupted, the correctional officers report to a supervisor. However, in the event of a major incident, e.g., a mutiny or riot, the officers have limited arrest authority. The correctional officers also do not have any direct authority over the conduct of other employees. The Federal Bureau of Prisons employs "contracting officials" who oversee the entire Taft operation, monitor all employees (rather than inmates), and who must be notified of all dangerous incidents.

The duties described above clearly indicate that the petitioned-for unit employees are guards within the meaning of the Act. The Petitioner argues that they are not guards because: they have limited authority to arrest or discipline; because all of the Employer's employees must receive the same training; because some non-unit employees are armed while on duty; and, primarily, because they have no specific responsibilities in the event of a labor strike by other employees. In support, the Petitioner cites *The Boeing Company*, 328 NLRB No. 25 (1999), which discusses the legislative intent of Congress in developing Section 9(b)(3) of the Act, and which advocates a narrow interpretation of the statute in defining guards. However, *Boeing*, as well as cases cited therein, dealt with firefighters employed to protect the employer's property against fire, thus the question was whether they

also had authority to protect against other employees; the Board found they did not. That situation is not analagous to the instant case, and is not persuasive in light of the facts herein.

More analagous is *Crossroads Community Correctional Center*, 308 NLRB 558 (1992), where correctional residence counselors at a low-risk work-release center, whose primary responsibilities were to ensure against contraband and unauthorized entry, count inmates, and report on disturbance or damage, were found to be guards. Of course, unlike the instant case, the employees in *Crossroads* were protecting the employer's own property. However, it has long been settled that employees who protect the property of customers of their employer are guards under the Act just as those who protect their employer's own property, *Electro-Protective Corp. of Georgia*, 251 NLRB 1141 (1980). In that case, service technicians who responded to customer security alarms were deemed to be guards; there was no concern as to whether they had authority over other employees or responsibilities in the event of a labor strike. Similarly, service technicians in *Wells Fargo Alarm Services*, 289 NLRB 562 (1988), citing with approval *Electro-Protective*, were held to be guards. Most recently, and most directly on point, in *Corrections Corporation of America*, 327 NLRB No. 127 (1999), correctional officers at a jail managed by the employer for the District of Columbia Department of Corrections, with duties and authorities remarkably similar to the instant case, were found to be guards. Thus, the absence of specific labor strike-protection duties will not prevent employees whose primary responsibility is order, safety and security from being deemed to be guards.

CONCLUSION

Thus, based on the above and the record as a whole, I find the petitioned-for correctional officers to be guards within the meaning of the Act. In light of the stipulation of the parties described above on page 2, I conclude the Petitioner is precluded by Section 9(b)(3) from being certified as their collective-bargaining representative. Accordingly, the petition must be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **September 9, 1999**.

DATED this 26th day of August, 1999 at Los Angeles, California.

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations
Region 31

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